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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 THOMAS FREDERICK LEONARD,

12 Petitioner,

13 v.

14 D. CUEDA,

15 Respondent.
16

No. 2:23-CV-2693-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Petitioner, a prisoner proceeding pro se, brings this petition for a writ of habeas
18 corpus pursuant to 28 U.S.C. § 2254. Pending before the Court is Respondent's unopposed
19 motion to dismiss. See ECF No. 13. Respondent argues that this action must be dismissed
20 because all claims raised are unexhausted. See id. Respondent further argues that Petitioner's
21 Fourth Amendment claim is not cognizable. See id. Respondent has lodged relevant state court
22 records in support of the motion to dismiss. See ECF No. 14.
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24 **I. BACKGROUND**

25 This action proceeds on Petitioner's second amended petition. See ECF No. 8.
26 Petitioner was convicted in the Sacramento County Superior Court of numerous counts of lewd
27 acts upon a child. See ECF No. 14-1 (abstract of felony judgment). On direct appeal, Petitioner
28 raised the following claims: (1) the evidence was insufficient to establish multiple instances of

1 lewd conduct as to victim A.; (2) the trial court erred in excluding evidence that victim A. had
 2 previously accused her cousin of molesting her; (3) trial court error and ineffective assistance of
 3 counsel as to testimony from Dr. Washington; (4) the trial court erred in allowing hearsay
 4 evidence; (5) ineffective assistance of counsel regarding the prosecutor's closing arguments; (6)
 5 the trial court erred in declining to stay punishment as to count one; and (7) cumulative error. See
 6 ECF NO. 14-2 (appellate court unpublished decision). The California Court of Appeal affirmed
 7 the conviction and remanded for resentencing. See id. The California Supreme Court denied
 8 review without comment or citation. See ECF No. 14-4. On remand, Petitioner was resentenced
 9 in the Sacramento County Superior Court on January 27, 2023. See ECF No. 14-5.

10 In the operative second amended petition, Petitioner raises the following claims:
 11 (1) Petitioner's confession was obtained through coercion; (2) the conviction was obtained in
 12 violation of Petitioner's Fifth Amendment rights against self-incrimination; (3) the prosecutor
 13 failed to disclose exculpatory evidence; and (4) evidence was obtained in violation of Petitioner's
 14 Fourth Amendment rights. See ECF No. 8.

15 II. DISCUSSION

16 Respondent argues: (1) the entire petition must be dismissed because none of the
 17 claims raised has been exhausted in state court; and (2) Petitioner's Fourth Amendment claim is
 18 not cognizable. See ECF No. 13. The Court agrees.

19 A. Exhaustion

20 Under 28 U.S.C. § 2254(b), the exhaustion of available state remedies is required
 21 before claims can be granted by the federal court in a habeas corpus case. See Rose v. Lundy,
 22 455 U.S. 509 (1982); see also Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir. 2003); Hunt v. Pliler,
 23 336 F.3d 839 (9th Cir. 2003). The exhaustion doctrine is based on a policy of federal and state
 24 comity, designed to give state courts the initial opportunity to correct alleged constitutional
 25 deprivations. See Picard v. Connor, 404 U.S. 270, 275 (1971); see also Rose, 455 U.S. at 518.
 26 “A petitioner may satisfy the exhaustion requirement in two ways: (1) by providing the highest
 27 state court with an opportunity to rule on the merits of the claim . . .; or (2) by showing that at the
 28

1 time the petitioner filed the habeas petition in federal court no state remedies are available to the
2 petitioner and the petitioner has not deliberately by-passed the state remedies.” Batchelor v.
3 Cupp, 693 F.2d 859, 862 (9th Cir. 1982) (citations omitted). Exhaustion is not a jurisdictional
4 requirement, and the court may raise the issue sua sponte. See Simmons v. Blodgett, 110 F.3d 39,
5 41 (9th Cir. 1997). Unless the petitioner can show that a stay of the federal petition to allow for
6 state court exhaustion proceedings is warranted, a petition asserting unexhausted claims should be
7 dismissed. See Mena v. Long, 813 F.3d 907 (9th Cir. 2016); Wooten v. Kirkland, 540 F.3d 1019,
8 1026 (9th Cir. 2008) (citing Rhines v. Weber, 544 U.S. at 278); Jefferson v. Budge, 419 F.3d
9 1013, 1016 (9th Cir. 2005).

10 Here, it is clear that Petitioner failed to raise any of the claims currently asserted in
11 the second amended petition in the California Supreme Court. Because Petitioner has not
12 demonstrated that a stay is warranted, and indeed has not opposed Respondent's motion at all, the
13 Court finds that dismissal is appropriate.

14 **B. Fourth Amendment Claims**

15 In Stone v. Powell, the United States Supreme Court held that “where the State has
16 provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner
17 may not be granted federal habeas corpus relief on the ground that evidence obtained in an
18 unconstitutional search or seizure was introduced at his trial.” 428 U.S. 465, 494 (1976). Thus, a
19 Fourth Amendment claim can only be litigated on federal habeas where petitioner demonstrates
20 that the state did not provide an opportunity for full and fair litigation of the claim; it is
21 immaterial whether the petitioner actually litigated the Fourth Amendment claim. Gordan v.
22 Duran, 895 F.2d 610, 613 (9th Cir. 1990). The issue before this Court is whether Petitioner had a
23 full and fair opportunity in the state courts to litigate his Fourth Amendment claim, not whether
24 Petitioner actually litigated those claims, nor whether the state courts correctly disposed of the
25 Fourth Amendment issues tendered to them. See id.; see also Siripongs v. Calderon, 35 F.3d
26 1308 (9th Cir. 1994).

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1 In his fourth claim, Petitioner asserts evidence used against him was obtained from
2 an illegal search and seizure, in violation of his rights under the Fourth Amendment. According
3 to Respondent:

4 . . . California's Penal Code section 1538.5 suppression procedure
5 provides the opportunity so Fourth Amendment claims are unavailable on
6 federal habeas whether or not the statutory procedure is utilized. *Ortiz-*
7 *Sandoval v. Gomez*, 81 F.3d 891, 899 (9th Cir. 1996); *Stephens v. Attorney*
8 *General, California*, 23 F.3d 248, 249 (9th Cir. 1994); *Gordon v. Duran*,
9 895 F.2d 610, 613-14 (9th Cir. 1990). Because Petitioner had such an
10 opportunity, his Fourth Amendment claim is barred and ground four
11 should be dismissed.

12 ECF No. 18, pg. 3.

13 The Court agrees. Because Petitioner had the opportunity to raise his Fourth
14 Amendment claim in the context of a suppression proceeding under California Penal Code §
15 1538.5, the claim is not cognizable regardless of whether Petitioner utilized this process.

16 III. CONCLUSION

17 Based on the foregoing, the undersigned recommends that Respondent's unopposed
18 motion to dismiss, ECF No. 13, be GRANTED.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
21 after being served with these findings and recommendations, any party may file written objections
22 with the Court. Responses to objections shall be filed within 14 days after service of objections.
23 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
24 Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 Dated: September 10, 2024



26 DENNIS M. COTA
27 UNITED STATES MAGISTRATE JUDGE
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